
IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

HOST AMERICA CORPORATION, a
Connecticut corporation,

Plaintiff,

vs.

COASTLINE FINANCIAL, INC., an
Arizona corporation,

Defendant.

ORDER AND MEMORANDUM DECISION

Case No. 2:06-CV-5

The court recently issued an order in this case resolving cross motions for summary judgment on the sole claim raised by Host America Corporation in its Complaint. While that order concluded that Host America's claim lacks merit, a Counterclaim filed by Coastline Financial, Inc. remains pending. Host America now seeks an immediate appeal of the court's determination that Host America's declaratory judgment claim lacks merit. The court has reviewed the memoranda filed both in support and in opposition to Host America's motion and concludes that certification is unwarranted.

28 U.S.C. § 1292(b) allows district courts to certify an order for interlocutory appeal if the court concludes that (1) the order involves a controlling question of law, (2) a substantial ground for difference of opinion concerning the ruling exists, and (3) an immediate appeal would materially advance the disposition of the litigation. 28 U.S.C. 1292(b) (1993). The Tenth Circuit has noted that a primary purpose of § 1292(b) is to avoid the waste of trial court time.

See Utah v. Kennecott Corp., 14 F.3d 1489, 1495 (10th Cir. 1994).

An interlocutory appeal will not materially advance the disposition of this litigation. While the court's May 31, 2005 order disposed of Host America's declaratory judgment claim, Coastline's Counterclaim remains pending. Allowing Host America to seek immediate appeal of its declaratory judgment claim will do nothing to hasten the resolution of Coastline's counterclaim and could result in piecemeal appeals.

Further, because the court ruled that Host America's declaratory judgment claim lacks merit, no additional litigation need occur in this court that could otherwise be avoided if Host America managed to achieve a successful result on appeal.

Therefore, Host America's Motion for Certification of Appealability of Court's Order is DENIED.

SO ORDERED this 6th day of July, 2006.

BY THE COURT:

A handwritten signature in black ink that reads "Tena Campbell". The signature is written in a cursive, flowing style.

TENA CAMPBELL
United States District Judge